

Message Text

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EO. 11652:GDS

TAGS: PFOR ENRG EG IS US

SUBJECT:MEETING WITH ROSENNE ON SINAI OIL

1. MFA LEGAL ADVISER MEIR ROSENNE MET WITH DEPARTMENT
LEGAL ADVISER LEIGH JULY 1 TO DISCUSS LEGAL ASPECTS OF
ISRAELI OIL EXPLORATION IN SINAI AND GULF OF SUEZ. DIS-
CUSSION TOUCHED ONLY VERY BRIEFLY AT END ON PROBLEM OF
ISRAELI HARASSMENT OF AMOCO OPERATIONS. NEITHER SIDE
PRESENTED FORMAL LEGAL MEMORANDA TO THE OTHER. DIS-
CUSSION, WHILE INCONCLUSIVE, REVEALED SERIOUS WEAKNESSES
IN ISRAELI CASE IN OPINION OF LEGAL ADVISER'S OFFICE.

2. DEPUTY LEGAL ADVISER ALDRICH MADE PRINCIPAL PRESENTA-
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TION FOR US SIDE. US POSITION BASED PRIMARILY ON ARTICLE

55 OF HAGUE REGULATION OF 1907, WHICH REGULATES, INTER ALIA, OCCUPYING POWER'S RIGHTS TO EXTRACT MINERAL RESOURCES. IN US VIEW, ARTICLE 55 PERMITS EXPLOITATION OF EXISTING OIL WELLS BY OCCUPYING POWERS, BUT NOT EXPLOITATION OF NEW WELLS. SINCE WE MUST ASSUME THAT ISRAEL INTENDS TO EXPLOIT ANY OIL DISCOVERED BY CURRENT EXPLORATION, WE MUST OPPOSE EXPLORATION, ALTHOUGH, IN ITSELF, IT WOULD NOT NECESSARILY BE ILLEGAL.

3. ROSENNE, WHO NOTED HE HAD NOT FULLY PREPARED FOR THIS MEETING, (ALTHOUGH HE READ FROM A PREPARED MEMORANDUM), SAID THIS PROBLEM BREAKS DOWN INTO FOUR QUESTIONS:

A. IS ISRAEL ENTITLED TO EXPLORE FOR OIL IN SINAI?

B. CAN ISRAEL GRANT CONCESSIONS FOR THAT PURPOSE?

C. IS ISRAEL ENTITLED TO DO THE SAME IN TERRITORIAL WATERS IT OCCUPIES IN GULF OF SUEZ?

D. CAN EGYPT GRANT CONCESSIONS SUBSEQUENT TO ISRAELI OCCUPATION OF THE CONCESSION AREA?

4. IN HIS PRESENTATION, ROSENNE SAID GOI HAS CONCLUDED:

A. THERE IS NO DISTINCTION BETWEEN EXPLOITATION OF OLD WELLS AND NEW WELLS; THEREFORE, ISRAEL COULD EXPLORE FOR NEW SOURCES OF OIL, SO LONG AS IT DID NOT WASTE THE RESOURCES;

B. ISRAEL, AND ONLY ISRAEL, CAN LEGALLY GRANT CONCESSIONS IN TERRITORIES IT OCCUPIES;

ANY CASE, HE THOUGHT THAT ISRAEL'S DRILLING ACTIVITIES WERE ONLY ABOUT 4 OR 4 1/2 KM FROM THE SHORE, AND THUS PROBABLY WITHIN THE 3-MILE LIMIT RECOGNIZED BY THE US;

D. EGYPTIAN CONCESSIONS GRANTED AFTER 1967 ARE NOT BINDING UNDER INTERNATIONAL LAW.

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5. IN SUMMARY, ROSENNE BELIEVED ISRAEL HAD A STRONG LEGAL CASE.

6. ALDRICH REPEATED THAT OUR UNDERSTANDING OF THE DOCTRINE OF USUFRUCT PROHIBITED THE OPENING AND EXPLOITATION OF NEW WELLS. WE ALSO DISAGREED WITH ISRAEL'S VIEWS ON ISRAELI RIGHTS OF OCCUPATION OF THE TERRITORIAL SEA AND ABOUT RIGHTS IN THE CONTINENTAL SHELF, AND BELIEVED THAT

EGYPT RETAINED RIGHT TO GRANT CONCESSIONS IN OCCUPIED TERRITORY AFTER OCCUPATION HAD BEGUN, ALTHOUGH WE RECOGNIZED THAT HOLDER OF CONCESSION COULD NOT DEMAND ACCESS DURING OCCUPATION.

7. THERE ENSUED A TECHNICAL DISCUSSION ABOUT THE DOCTRINE OF USUFRUCT, IN WHICH THE US NOTED THAT THE LAW WAS CLEAR ON EXPLOITATION OF MINERAL RESOURCES -- USE OF OLD MINES AND WELLS AT PRE-EXISTING RATES WAS A LIMITED EXCEPTION TO THE PROHIBITION OF WASTE OF CAPITAL ASSETS. EARLIER, ONLY RENEWABLE RESOURCES, LIKE CROPS AND TREES COULD BE TAKEN AND ONLY SO LONG AS CAPITAL WAS PRESERVED. THE EXCEPTION DID NOT EXTEND TO OPENING NEW MINES OR WELLS, WHICH WAS PROHIBITED WASTE IN LEGAL SYSTEMS USING THE USUFRUCTUARY CONCEPT. THE US SIDE MADE THE ADDITIONAL POINT THAT UNDER INTERNATIONAL LAW ON BELLIGERENT OCCUPATION THE OCCUPYING POWER HAD THE RIGHT TO USE PROPERTY UNDER USUFRUCT OR ANY OTHER HEADING OF THE LAW ONLY FOR MILITARY PURPOSES OR TO CARRY OUT ITS RESPONSIBILITIES AS AN ADMINISTERING POWER TOWARD THE LOCAL POPULATION. THE US POINTED OUT THAT THERE WAS SOME AUTHORITY FOR THE FURTHER PROPOSITION THAT SUCH PROPERTY COULD ONLY BE USED IN OCCUPIED TERRITORY ITSELF.

8. EACH SIDE TACITLY AGREED TO DO FURTHER WORK ON ITS POSITION BASED ON ITS PRESENT UNDERSTANDING OF THE OTHER SIDE'S POSITION, BUT NO TIME-TABLE WAS AGREED UPON FOR AN EXCHANGE OF PAPERS.

9. BEFORE ADJOURNING, LEIGH RAISED QUESTION OF HARASSMENT OF AN AMERICAN COMPANY'S VESSELS IN THE GULF. HE SAID THE US VIEWS THIS MATTER SERIOUSLY AND URGED THAT ISRAEL TREAT IT WITH SIMILAR CONCERN. ROSENNE NOTED MR. LEIGH'S CONFIDENTIAL

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REMARK, BUT MADE NO REPLY.

10. FULL MEMCON BEING POUCHED. KISSINGER

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